

AMENDMENTS TO THE CRIMINAL PRACTICE DIRECTIONS March 2022

SUMMARY OF KEY CHANGES

This is the twelfth amendment to the Criminal Practice Directions 2015¹. It was issued by the Lord Chief Justice today (23rd March 2022) and comes into force on the 24th March 2022.

This update provides amendments to existing Criminal Practice Directions and supplements the Criminal Procedure Rules. The Table of Content is amended accordingly.

1. CPD V Evidence 18E: USE OF S.28 YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999; PRE-RECORDING OF CROSS-EXAMINATION AND RE-EXAMINATION FOR WITNESSES CAPTURED BY S.16 YJCEA 1999.

These amendments create new paragraphs which provide further guidance on the legislative requirements of the Youth Justice and Criminal Evidence Act 1999, specifically that the judge should pay careful regard to whether a s.28 special measures direction will in fact materially advance the date for the recording of the cross-examination and re-examination, so as to maximise, along with any other measures, the quality of the witness's evidence.

An amendment to 18E.5 requires the CPS to give prior approval before the police discuss with the witness, parent or carer the special measures that are available if that will not cause undesirable delay.

Changes to listing of s.28 hearings have been made, so that now s.28 hearings should be listed at a time to be determined by the List Officer, or as directed by the judge or Resident Judge, bearing in mind the circumstances of the witness as well the availability of the judge, the advocates and a courtroom with the relevant equipment.

Further amendments mean that the judge now has discretion as to whether they will require the same advocate to appear at both the ground rules hearing and the s.28 cross-examination. Similarly, it is not mandatory for the advocate who conducted the s.28 cross-examination to represent the

¹ [2015] EWCA Crim 1567. Amendment Number 1 [2016] EWCA Crim 97 was issued by the Lord Chief Justice on 23rd March 2016 and came into force on the 4th April 2016. Amendment Number 2 [2016] EWCA Crim 1714 was issued by the Lord Chief Justice on 16th November 2016 and came into force on 16th November 2016. Amendment Number 3 [2017] EWCA Crim 30 was issued by the Lord Chief Justice and came into force on the 31st January 2017. Amendment Number 4 [2017] EWCA Crim 310 was issued by the Lord Chief Justice on 28th March 2017 and came into force on 3rd April 2017. Amendment Number 5 [2017] EWCA Crim 1076 was issued by the Lord Chief Justice on 27th July 2017 and came into force on 2nd October 2017. Amendment Number 6 [2018] EWCA Crim 516 was issued by the Lord Chief Justice on 21st March 2018 and came into force on 2nd April 2018. Amendment Number 7 [2018] EWCA Crim 1760 was issued by the Lord Chief Justice on 26th July 2018 and came into force on the 1st October 2018. Amendment Number 8 EWCA [2019] Crim 495 was issued by the Lord Chief Justice on 28th March 2019 and came into force on the 1st April 2019. Amendment Number 9 EWCA [2019] Crim 1603 was issued by the Lord Chief Justice on 10th October 2019 and came into force on 14th October 2019. Amendment Number 10 EWCA [2020] Crim 605 was issued by the Lord Chief Justice on 12th May 2020 and came into force on 13th May 2020. Amendment Number 11 EWCA Crim 1347 was issued by the Lord Chief Justice on 29th October 2020 and came into force on Monday 16th November 2020.

defendant at trial, though continuity of advocate is to be encouraged. In addition, whether the ground rules hearing and s.28 hearing need to be listed before the same judge is at the Resident judge, or nominated lead judge's discretion.

Other changes clarify that it will be for the judge to decide whether a ground rules hearing is necessary. Where one is ordered, a minor change explains that potential topics for the hearing may require discussion but it depends on the circumstances of the case.

A change to the renumbered 18E.59 explains that the judge should discuss with advocates what to say to a jury about limits on s.28 questioning at the start of the trial, if not done at the ground rules hearing. In addition, the paragraph now states that the judge should consider giving a direction to a jury on any limitations to s.28 questioning, which will likely be necessary before the recording is played.

Other amendments do not make any substantive changes, but rather revise and reorganise existing sections to make the practice direction easier to read and understand. Some references containing information found elsewhere in the CPD or in other guidance have been removed.